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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,641	07/24/2003	Johnnie Mac Harrison	HAR 101	9042

7590 08/03/2006  
ALFRED F. HOYTE, JR.  
1101 30TH STREET NW, STE 500  
WASHINGTON, DC 20007

EXAMINER

POLLICOFF, STEVEN B

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/625,641	<b>Applicant(s)</b> HARRISON, JOHNNIE MAE	
	<b>Examiner</b> Steven B. Pollicoff	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 7/10/06 have been fully considered but they are not persuasive. Applicant argues that the Anastor reference does not teach a permanent divider because the reference discloses that the divider is frangible or easily broken (Anastor column 2, lines 7-9). However, this is unpersuasive because even permanent structures are subject to failure/breakage given an appropriate external force placed on them. The Anastor divider permanently separates two liquid filled compartments until an external hydraulic pressure is placed on the device. Therefore, the Anastor reference, as modified, still appropriately reads on the amended claims and the rejection maintained.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1,7 and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The word "permanent," referring to the divider of the present invention in the amended claims is not supported by the specification and therefore considered new matter.

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***Specification***

The amendment filed 7/10/06 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The word "permanent," referring to the divider of the present invention in the amended claims is not supported by the specification and therefore considered new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1,6,7,12,14,15,16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastor (U.S. Pat. No. 2,815,755) in view of Ratcliff (U.S. Pat. No. 5,052,590).

As to claim 1,7,14,15 and 16 Anastor discloses a dual chamber container (Anastor Fig. 1) having a cylindrical body, including a first (reference number 13, left side) and second end (reference number 13, right side) directly opposite one another, a **permanent** transverse divider (reference number 11, in as much as the divider is securely connected to the side walls it is considered to be permanently connected) within the body dividing the body into a first (Fig. 5, reference number 12, left side) and second chamber (reference number 12, right side) **whereby unintended mixing of the first and second chambers is prevented**, and a sealable opening and closure (reference number 19) in each of the first and second chambers at the first and second ends of the body, respectively. Anastor does not disclose a first quantity of mouth cleansing liquid (personal care liquid) in the first chamber or a second quantity of mouth rinsing liquid (personal liquid) in the second chamber. However, Ratcliff discloses a dual chamber container (Ratcliff Fig. 2) containing mouth wash liquids (Column 2, lines 25-29) to be used to reduce dental plaque (Column 1, lines 12-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the contents of the Anastor chambers to include mouth wash liquids, as taught by Ratcliff, for the purpose of making available to a user effective compounds to prevent bacteria and decay of the mouth (Column 4, lines 21-25).

As to claims 6,12 and 19, Anastor does not disclose that the container is sealed by a screw cap. However, Ratcliff discloses that the dual chambered container can be sealed by a screw cap (Ratcliff Fig. 2) for sealing the chamber outlets/openings (Ratcliff Column 4, lines 53-55). Therefore, it would have been obvious to one of ordinary skill in

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the art at the time the invention was made to replace the rubber plugs sealing the chamber openings of the Anastor device with screw caps for the purpose of more securely sealing the contents of the chambers of the container.

Claims 2,3,8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastor (U.S. Pat. No. 2,815,755) in view of Ratcliff (U.S. Pat. No. 5,052,590) as applied to claims 1 and 7 above, and further in view of Frazier et al., (U.S. Pat. No. 4,980,152).

As to claims 2,3,8 and 9, Anastor as modified above, does not disclose that one of the mouth wash liquids is hydrogen peroxide. However, Frazier discloses a mouthwash composed of hydrogen peroxide and water to help prevent caries, plaque, gingivitis, periodontitis and orthodontic appliance legions (Frazier Column 1, lines 9-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the contents of the Anastor chambers to include hydrogen peroxide and water, as taught by Frazier, since both are well known as mouth washing agents that prevent bacteria build-up associated with periodontal disease (Column 1, lines 21-24).

Claims 4,5,10,11,13,17,18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastor (U.S. Pat. No. 2,815,755) in view of Ratcliff (U.S. Pat. No. 5,052,590) as applied to claims 1,7 and 14 above, and further in view of Clyde et al., (U.S. Pat. No. 6,247,617).

As to claims 4,10 and 17, Anastor as modified above, does not disclose that the dual chamber container is plastic. However, Clyde discloses a single use, double

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chambered container (Clyde Fig. 1, reference numbers 10 and 20) that is made of a flexible polymer (e.g. a plastic). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the material of the Anastor container with plastic, as taught by Clyde, for flexibility in construction of the container, for flexibility in the types of compositions that can be contained in the chambers and easy sterilization (Clyde Column 4, lines 35-54).

As to claims 5, 11 and 18, Anastor as modified above, does not disclose that the chambers are sealed by a pull-tab. However, Clyde discloses that the chambers are sealed by a pull-tab (tear-off tab) for easy grasping and single action removal from the container (Clyde Column 3, lines 64-66). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the rubber plugs sealing the chamber openings of the Anastor device as modified above with pull tabs for the purpose of more securely sealing the contents of the chambers of the container and easier single action removal.

As to claims 13 and 20, Anastor as modified above, does not disclose that the two chambers have different volumes. However, Clyde discloses that the chambered container has two different chambers with different volumes (Clyde Fig. 1, reference numbers 10 and 20) for more accurate and effective administration of the compositions in the chambers (Clyde Column 3, lines 40-43; see also Column 4, lines 4-7) .

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the chambers of the Anastor container as modified to include two chambers of different volumes, as taught by Clyde for the purpose of

containing a volume appropriate for the intended application (Clyde Column 4, lines 11-13).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status



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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*SBP* 7/28/06  
SBP

  
JILA M. MOHANDESI  
PRIMARY EXAMINER